

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL JEROMIA PURIFOY,

Defendant-Appellant.

UNPUBLISHED
February 23, 2012

No. 299914
Wayne Circuit Court
LC No. 10-001865-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH DION MAJOR,

Defendant-Appellant.

No. 300238
Wayne Circuit Court
LC No. 10-001865-FH

Before: GLEICHER, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

In the early morning hours of November 24, 2009, codefendants Paul Jeromia Purifoy and Keith Dion Major, along with a third accomplice, broke into the home of Richard Cox and assaulted various residents inside. The homeowners forcefully resisted the attack, shooting each defendant and fatally wounding their accomplice. Defendants Purifoy and Major now appeal their jury trial convictions of first-degree home invasion and assault. We affirm defendant Purifoy's conviction and sentence. While we affirm defendant Major's convictions of home invasion and assault with intent to do great bodily harm, we reverse his conviction and sentence for assault and battery. The prosecution presented no evidence to support that Major committed assault and battery against the cited victim, Bobby Card.

I. BACKGROUND

This case began with an automobile purchase agreement gone wrong. One of the victims, Richard Cox, had sold a used Ford Taurus to a man named "Leon." Cox believed that Leon had

not paid the full agreed-upon price and apparently repossessed the vehicle. However, Leon had only served as a middleman in the transaction for defendant Keith Major. On the afternoon of November 23, 2009, defendant Major and Antonio Caston went to Cox's home to discuss the situation. Defendant Major accused Cox of stealing his car. Defendant Major and Caston then physically attacked Cox. Cox's cousin, Bobby Card, was present and joined the fray. During the scuffle, Card cut defendant Major with a metal tool. Major fled but threatened to return.

Defendant Major somehow regained possession of the Taurus. In the early morning hours of November 24, Major drove that vehicle to Cox's home. He was accompanied by Caston and defendant Paul Purifoy. From a third story window, Cox, Card and their relative, Terry Cox, saw the men arrive and approach the house. They heard a loud crash as someone broke through the locked front door. Another of Cox's relatives, Donald Lilly, had been on the first floor watching television. Defendant Major "pistol whipped" Lilly in the face, breaking his nose and knocking him unconscious. The intruders then climbed the stairs to the home's second floor, where they confronted an armed Cox flanked by Card. Cox chased Caston out of the home, shooting as both ran toward the front door. Cox managed to shoot Caston three times in the back and the intruder fell dead on the curb in front of a neighboring house. Cox then battled with defendant Major in the kitchen when the intruder tried to disarm him. Cox shot Major once and the man fled from the home.

While Cox fought Major, Card battled another intruder on the home's second floor. Card could not identify the intruder. However, Card was certain the man was not Major. He was equally certain that the man was not Caston as Caston was already dead. Cox's nephew, Terry Cox, remained hidden during the melee. At some point, he heard defendant Purifoy call out, "I'm hit." Terry recognized Purifoy's voice as the two were well acquainted. Terry thought Purifoy called from outside the house, but he could not be certain. Terry eventually found Lilly lying unconscious on the first floor and used his cell phone to call 911.

Officers responded quickly to the scene and found defendants Major and Purifoy sitting in the Taurus in front of Cox's home. Both defendants and Lilly were transported to the hospital for treatment of their injuries. As a result of these events, a jury convicted defendant Purifoy of first-degree home invasion in violation of MCL 750.110a(2). The court sentenced him to 31 months to 20 years' imprisonment. The jury also convicted defendant Major of home invasion, as well as assault with intent to do great bodily harm less than murder in relation to Lilly, MCL 750.84, and assault and battery in relation to Card, MCL 750.81. The court imposed concurrent sentences of 87 months to 20 years, 5 to 10 years, and 93 days' imprisonment respectively.

II. ARRAIGNMENT ON THE INFORMATION

Defendant Purifoy contends that the circuit court never gained jurisdiction over him because it failed to arraign him on the information. Defendant Purifoy's arraignment was scheduled for February 25, 2010, but he did not appear. The court adjourned until the following day, by which time defense counsel had discovered that Purifoy was being held in the Hamtramck city jail on unrelated charges. The court agreed to issue orders to secure defendant Purifoy's presence for an arraignment and it appears from the record that defendant was actually arraigned the following week.

Even assuming that defendant Purifoy had never been arraigned, he would not be entitled to relief. Purifoy proceeded to the preliminary examination and trial without raising this objection. It has been long settled that “the presence of defendant in court through a trial of the cause upon the merits represented by counsel who failed to call attention to the omission of arraignment and plea” amounts to a waiver of any such errors. *People v Weeks*, 165 Mich 362, 364; 130 NW 697 (1911). By “[a]nnouncing himself ready for trial,” the defendant essentially enters his plea of not guilty and after a trial on the merits, the lack of a formal plea and arraignment is a moot point. *Id.*

III. SUFFICIENCY OF THE EVIDENCE

Each defendant claims that the prosecution presented insufficient evidence to support his conviction. Purifoy challenges his conviction on the home invasion charge, arguing that the prosecution failed to prove his actual presence in Cox’s home. Major similarly challenges his convictions based on the lack of physical evidence tying him to the home invasion and assaults. We review defendants’ claims de novo, *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999), taking the evidence “in the light most favorable to the prosecution to determine whether any rational trier of fact could have found that the essential elements of the crime charged were proven beyond a reasonable doubt.” *People v Lundy*, 467 Mich 254, 258; 650 NW2d 332 (2002).

To convict a defendant of first-degree home invasion, the prosecution must prove beyond a reasonable doubt that (1) the defendant either “br[oke] and enter[ed] a dwelling or . . . enter[ed] a dwelling without permission”; (2) “intend[ed] when entering to commit a felony, larceny, or assault in the dwelling or . . . at any time while entering, present in, or exiting the dwelling comit[ted] a felony, larceny, or assault”; and (3) while “entering, present in, or exiting the dwelling,” “the defendant [was] armed with a dangerous weapon or . . . another person [was] lawfully present in the dwelling.” *People v Wilder*, 485 Mich 35, 43; 780 NW2d 265 (2010).

Purifoy denies only that he *entered* Cox’s home. Purifoy contends, therefore, that the prosecution failed to establish the threshold element of home invasion. However, the prosecution presented adequate circumstantial evidence from which the jury could reasonably infer that Purifoy entered Cox’s home in the early morning hours of November 24. See *People v Bulmer*, 256 Mich App 33, 37; 662 NW2d 117 (2003) (holding that circumstantial evidence and the reasonable inferences arising therefrom are sufficient to support a criminal conviction). Terry testified that Purifoy later admitted to him that he entered Cox’s home after hearing gunfire and was shot inside. Cox and Card both testified that they saw three men outside right before the unlawful entry. Cox also claimed to see three men enter the home. Further, Card testified that he saw an intruder other than defendant Major in the home after Caston had been shot and killed. Card then engaged in a scuffle with that man. Immediately after the shooting, the police located three men (Major, Caston and Purifoy) outside the home and no one else was discovered in the area. This evidence leads to a reasonable inference that Purifoy was the previously unidentified third man who unlawfully entered Cox’s home. Purifoy also told the attending physician who treated his gunshot wound that “he was fighting inside a house” when he was shot. Although the witnesses presented conflicting accounts of the evening’s events, those conflicts “must be resolved in favor of the prosecution.” *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). The evidence, viewed in the light most favorable to the

prosecution, supports the jury's conclusion that Purifoy entered Cox's home without permission while others were lawfully present and that he either committed an assault or aided and abetted Major's felonious activity inside.

The prosecution also presented sufficient evidence to support Major's convictions of home invasion and assault upon Lilly. Contrary to Major's contention, the prosecution is never required to present direct physical evidence; witness accounts and circumstantial evidence can be sufficient to support a conviction. *People v Nowack*, 462 Mich 392, 400-403; 614 NW2d 78 (2000).¹ Here, Cox and Lilly both testified that Major was among the intruders inside their home. Lilly specifically identified Major as the man who used a weapon to hit him in the head and break his nose. Cox identified Major as the individual who attempted to wrest away his gun in the home's kitchen. The evidence was more than sufficient to prove that Major unlawfully entered Cox's home and assaulted Lilly inside.

We agree with Major's assertion, however, that the prosecution presented insufficient evidence to prove beyond a reasonable doubt that he committed assault and battery against Card. An "assault" is defined as "either an attempt to commit a battery or an unlawful act that placed another in reasonable apprehension of receiving an immediate battery." *People v Meissner*, ___ Mich App ___, ___; ___ NW2d ___ (Docket No. 298780, released October 25, 2011), slip op at 7-8, quoting *People v Starks*, 473 Mich 227, 234; 701 NW2d 136 (2005). "Battery" is defined as "an intentional, unconsented and harmful or offensive touching of the person of another." *Meissner*, slip op at 8, quoting *People v Reeves*, 458 Mich 236, 240 n 4; 580 NW2d 433 (1998). According to Card's testimony, he never saw Major inside the home. The record is clear that Major never touched Card. Card's only interaction with an intruder during the home invasion was his altercation with Purifoy. As there is no evidence that Major touched Card or caused Card any fear or anxiety, the prosecution failed to support the assault and battery conviction. We therefore reverse Major's assault and battery conviction and sentence only.

Affirmed in part, reversed in part. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Patrick M. Meter
/s/ Pat M. Donofrio

¹ As the prosecution was not required to present direct physical evidence to support its case, Major's challenge to counsel's failure to object on this ground lacks merit. Counsel is not ineffective for failing to raise a futile or meritless objection. *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).